

1 Jeffrey A. LeVee (State Bar No. 125863)
jlevee@Jonesday.com
2 Kate Wallace (State Bar No. 204447)
kwallace@jonesday.com
3 Rachel T. Gezerseh (State Bar No. 251299)
rgezerseh@jonesday.com
4 Charlotte S. Wasserstein (State Bar No. 279442)
cswasserstein@jonesday.com
5 JONES DAY
6 555 South Flower Street
Fiftieth Floor
7 Los Angeles, CA 90071.2300
Telephone: +1.213.489.3939
8 Facsimile: +1.213.243.2539

9 Attorneys for Defendant
INTERNET CORPORATION FOR ASSIGNED
10 NAMES AND NUMBERS

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 DOTCONNECTAFRICA TRUST,

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND
20 NUMBERS, a California corporation;
21 ZA Central Registry, a South African
non-profit company; DOES 1 through
50, inclusive,

22 Defendant.
23
24
25
26
27
28

Case No. CV 16-00862-RGK(JCx)

Assigned for all purposes to the
Honorable R. Gary Klausner

**ORDER RE JOINT
STIPULATED PROTECTIVE
ORDER [CHANGE MADE TO
PARAGRAPH 9]**

1 WHEREAS, the parties to this case, Plaintiff DotConnectAfrica Trust
2 (“Plaintiff”) and Defendants Internet Corporation for Assigned Names and
3 Numbers (“ICANN”) and ZA Central Registry “(ZACR””, (together, “Defendants”),
4 by and through their respective attorneys of record, have stipulated to the entry of
5 the following Protective Order pursuant to Federal Rule of Civil Procedure 26(c),
6 and having considered the parties’ Joint Stipulated Protective Order, and good
7 cause appearing, **IT IS HEREBY ORDERED AS FOLLOWS:**

8 1. Scope

9 This Order shall be applicable to and govern all documents, things and
10 information produced, furnished or created during the course of this Action,
11 including any materials or information sought from a non-party who receives a
12 subpoena in connection with this Action or otherwise produces materials or
13 information in this Action. The information protected includes but is not limited to:
14 materials and information produced in response to requests for production of
15 documents; answers to interrogatories; answers to requests for admission; responses
16 to requests for production of documents; deposition testimony, exhibits, transcripts,
17 and videotapes; all other discovery, pleadings, briefs, memoranda, affidavits,
18 transcripts; and other materials furnished by or on behalf of any Party to this Action.
19 Any summary, analysis, description, compilation, notes, excerpt, copy, electronic
20 image or database containing Confidential Material as defined below shall be
21 subject to the terms of this Order to the same extent as the material or information
22 from which such summary, analysis, description, compilation, notes, excerpt, copy,
23 electronic image, or database is made or derived.

24 This Order applies to all documents and information produced in this Action
25 regardless of whether such document or information was produced prior to or after
26 entry of this Order.
27
28

1 In the event that non-parties produce documents or information in connection
 2 with this Action, the production of such documents may be made subject to the
 3 provisions of this Order. As necessary and appropriate to uphold the terms of this
 4 Order, the existence of this Order may be disclosed to any person (including any
 5 non-party served with a subpoena in this action) producing documents, tangible
 6 things, information, or testimony in this Action.

7 Nothing in this Order is intended to conflict with the applicable Local Rules.
 8 Insofar as anything in this Order could be interpreted as conflicting with the
 9 applicable Local Rules, the Local Rules will govern. Any use of Confidential
 10 Material as defined below during a court hearing or at trial shall be governed by the
 11 orders of the presiding judge.

12 2. Definitions

13 The term "Confidential Material" shall mean material designated
 14 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" pursuant to this
 15 Order.

16 The term "Producing Party" means the Party or non-party producing or
 17 disclosing documents or information that are designated as Confidential Material
 18 under this Order.

19 The term "Receiving Party" shall mean the Party or Parties to whom
 20 Confidential Material is produced or otherwise disclosed.

21 3. Good Cause Statement

22 Good cause exists because if such Confidential Material was produced
 23 without a protective order in place, then, among other things: the privacy rights of
 24 third parties protected under Constitutional, statutory, and common law principles
 25 would be violated; third parties could be exposed to embarrassment, theft, fraud, or
 26 harassment; a Producing Party could be accused of breaching a statutory,
 27 contractual, or common law duty to protect private and/or proprietary information
 28

from public disclosure; and/or competitors could unfairly leverage the time, money, and expertise invested by a Producing Party to develop non-public, proprietary information (such as business and marketing plans, research, pricing and sales information, and trade secrets), and thereby irreparably injure the Producing Party in the marketplace. Accordingly, to expedite the flow of information but also adequately protect Confidential Material, a protective order is justified. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause to protect it.

4. Confidential Material

- a. “Confidential” Information: Any Party or non-party may designate information or documents produced in this Action as “Confidential” if such Party or non-party has the reasonable and good faith belief that such information is non-public and constitutes her, his, or its trade secret, other confidential information within the meaning of Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, or otherwise protected from public disclosure. This includes but is not limited to confidential research, development, or commercial information (as those terms are used in Fed. R. Civ. P. 26(c)), and personal medical information, private personal information, employment information, health information, and tax returns.
- b. “Highly Confidential – Attorneys’ Eyes Only” Information: “Highly Confidential – Attorneys’ Eyes Only” information, for purposes of this Order, is Confidential Material that the Producing Party determines in good faith would create a risk of serious injury that could not be avoided by less restrictive means, likely having the effect of causing

1 harm to the business of the Producing Party if disclosed including, for
2 example and without limitation, information of a proprietary nature
3 that might reasonably be of value to a person or entity with adverse
4 interests to the Party or non-party holding the proprietary rights to the
5 information, or information of a private and sensitive nature that might
6 reasonably be of value to a person or entity with adverse interests to
7 the Producing Party or non-party to whom the information relates.

8 5. Designating Confidential Material

9 Any information supplied in documentary or other tangible form may be
10 designated by the Producing Party as Confidential Material by marking or stamping
11 on each page of such document, transcript, or exhibit, or on the face of such thing,
12 the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
13 EYES ONLY." Where such marking of material is impossible or impractical (such
14 as groups of documents in native form), the Producing Party shall designate in
15 writing, at the time of its production, that the material contains Confidential
16 Material and whether it is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
17 ATTORNEYS' EYES ONLY." Information produced by a non-party but
18 subsequently designated as confidential by a party to the Action shall be treated as
19 Confidential Material, and the recipients shall either mark their copies as
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY," or request that the Producing Party provide a replacement set so marked.

22 6. Use of Information

23 All information or documents disclosed in this Action, whether or not
24 containing Confidential Material, shall be used solely for purposes of this Action
25 and not in connection with any other litigation or judicial or regulatory proceeding
26 or for any business, commercial, competitive, personal or other purpose.

27 ///

1 7. Restrictions on the Disclosure of Highly Confidential – Attorneys'
 2 Eyes Only Information

3 Disclosure of documents designated as “CONFIDENTIAL – ATTORNEYS’
 4 EYES ONLY” shall be limited to the following entities and individuals, unless
 5 otherwise ordered by the Court or permitted in writing by the Producing Party:

- 6 a. The Parties’ counsel who are actively engaged in the Action, including
 7 their associates, clerks, paralegals, investigators, stenographic
 8 personnel, litigation support contractors, contract attorneys, and such
 9 other regular and temporary employees who assist counsel in the
 10 conduct of such Action, including employees of any firm retained to
 11 reproduce the discovery material for use in accordance with this
 12 Stipulated Protective Order;
- 13 b. The United States District Court for the Central District of California,
 14 its Judges, law clerks, judicial assistants, clerks and stenographic
 15 personnel in connection with the Action in accordance with the terms
 16 of this Stipulated Protective Order;
- 17 c. The individuals described below:
- 18 i. Any outside expert or consultant retained by counsel or a
 19 Party to assist in the preparation of this case, or to testify
 20 at trial or any other proceeding in the Action, provided
 21 each such individual has read this Stipulated Protective
 22 Order in advance of disclosure, and has agreed in writing
 23 to be bound by its terms in the form attached hereto as
 24 **Exhibit A;**

25 ///

26 ///

27 ///

- ii. Stenographic and clerical employees associated with the individuals described in paragraph 7(c)(i), provided, however, that such employees need not execute the form attached hereto as **Exhibit A**; and
- iii. Any person who is the original source of the information, is specifically identified as an author or recipient of the document, or otherwise has knowledge of the information, provided, however, that such person need not execute the form attached hereto as **Exhibit A**.

8. Restrictions on the Disclosure of Confidential Information

Disclosure of documents designated as “CONFIDENTIAL” shall be limited to the following entities and individuals, unless otherwise ordered by the Court or permitted in writing by the Producing Party:

- a. Those individuals described in Paragraph 7;
- b. The Parties, their principals, officers, directors, and employees of the Party; and
- c. Actual deposition or trial witnesses (including use in connection with the preparation of said witnesses), provided that each such individual has read this Stipulated Protective Order in advance of disclosure, and has agreed in writing to be bound by its terms in the form attached hereto as **Exhibit A**.

Proof of each written agreement provided for under paragraphs 7(c) and 8(c) shall be preserved by each of the Parties while the Action is pending and turned over to the other Parties if the Court so orders.

9. Filing of Under Seal Documents

If any Party or non-party wishes to submit any Confidential Material to the Court, the person shall, unless directed by the Court to do otherwise, comply with

1 Local Rule 79-5 and with any pertinent orders of the assigned District Judge and
 2 Magistrate Judge. If a Party or non-party's requests to maintain a submission
 3 containing Confidential Material under seal is denied as to one or more submissions,
 4 and the Party or non-party does not seek reconsideration under the applicable Local
 5 Rules or otherwise appeal the denial, then those submissions may be placed in the
 6 public record.

7 10. Procedure for Designating Deposition Testimony

8 In the event that any question is asked at a deposition that involves or calls
 9 for the disclosure of Confidential Material, the witness shall nevertheless answer
 10 such question unless he or she has an independent basis for not responding,
 11 provided that the only persons in attendance at the deposition are persons who are
 12 permitted to receive the Confidential Material. Testimony given at a deposition
 13 may be designated as Confidential Material by making a statement to that effect on
 14 the record. Alternatively, within thirty (30) business days after receipt of a
 15 transcript, the parties also may designate such transcript or any portion thereof by
 16 notifying all Parties, in writing, of the specific pages and lines of the transcript
 17 which should be treated as Confidential Material. All deposition transcripts shall
 18 be treated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" until
 19 thirty (30) business days after receipt thereof by counsel for the Parties and counsel
 20 for the witness. The reporter for any deposition shall mark the transcript with the
 21 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 22 EYES ONLY," pages that contain testimony designated as Confidential Material
 23 during the deposition.

24 11. Use of Confidential Material at Pre-trial Hearings

25 This order does not govern the conditions under which Confidential Material
 26 can be used at pre-trial or trial proceedings. The Parties, however, stipulate to
 27 provide at least seven days notice to the Producing Party of any Confidential
 28

1 Material that the Receiving Party reasonably anticipates that it may use at a pre-trial
2 hearing so that the Producing Party can take steps in advance of any such hearing to
3 seek a separate protective order regarding the use or disclosure of such Confidential
4 Material.

5 12. Inadvertent Production of Privileged Materials

6 Pursuant to Fed. R. Evid. 502(d), disclosure of privileged or otherwise
7 protected information is not waived for purposes of other actions or proceedings by
8 inadvertent disclosure in this action. In the event any document is produced that the
9 Producing Party later claims is protected by the attorney-client privilege, work
10 product doctrine or other privilege or immunity, the production shall not be deemed
11 a waiver or impairment of any claim of privilege or protection or the subject matter
12 thereof, provided that the Producing Party shall immediately notify the Receiving
13 Party in writing when the inadvertent production is discovered. Within five (5)
14 business days of receiving written notice, along with a log accurately describing
15 such material consistent with Fed. R. Civ. P. 26(b)(5)(A), from the Producing Party
16 that privileged or protected information has been inadvertently produced, the
17 Receiving Party shall (a) return all such information, and all copies thereof, to the
18 Producing Party, reviewing such information (if at all) no more than is permitted by
19 the applicable ethical rules; (b) take all reasonable steps to retrieve the information
20 if the Receiving Party disclosed it before being notified; and (c) certify that any
21 materials prepared by the Receiving Party incorporating such information, such as
22 notes, memoranda, etc., have been destroyed. If the Receiving Party wishes to
23 challenge the claimed privilege, work-product protection or immunity, the
24 Receiving Party must still comply with (a) and (b) in the preceding sentence, except
25 that the Receiving Party may retain any notes referencing the Confidential Material
26 insofar as such retention is permitted by the applicable ethical rules and the notes
27 are necessary to comply with Local Rule 37.
28

1 In the event the Receiving Party wishes to challenge the claimed privilege,
 2 work-product protection or immunity, the parties shall comply with Local Rule 37
 3 in resolving their dispute. The parties agree any permissible retention of notes
 4 referencing the Confidential Material for the sole purpose of complying with Local
 5 Rule 37 shall not be grounds for arguing that the document is not privileged, work-
 6 product-protected or otherwise immune, or that any privilege, protection or
 7 immunity was waived thereby. During the pendency of the Local Rule 37 process,
 8 the Receiving Party shall make no other use or disclosure of the subject material or
 9 the information contained therein. If the motion is unsuccessful, the Receiving
 10 Party shall comply with subsection (c) noted above.

11 13. Inadvertent Failure to Designate

12 Inadvertent failure to designate any material or information as Confidential
 13 Material pursuant to this Order shall not constitute a waiver of any otherwise valid
 14 claim for protection and may be remedied by supplemental written notice. If such
 15 notice is given, all information so designated shall be fully subject to this Order as
 16 if it had been initially designated as Confidential Material. After any designation is
 17 made in accordance with this paragraph, arrangements shall be made for the return
 18 to the Producing Party of all copies of the inadvertently undesignated documents
 19 and for the substitution, where appropriate, of properly labeled copies.

20 14. Purpose of Order

21 Nothing in this Order, nor the production of any documents or disclosure of
 22 any information pursuant to this Order, shall be deemed to have the effect of (i) an
 23 admission or waiver, including waiver under the rules of evidence, by any Party or
 24 other subscriber to this Order; (ii) altering the confidentiality or nonconfidentiality
 25 of any such information; or (iii) altering any existing obligation of any Party or
 26 other subscriber, or the absence of such obligation.

27 ///

1 15. Challenges to Confidentiality Designation

2 If the Receiving Party disagrees with the confidentiality designation by the
3 Producing Party, then the parties shall comply with Local Rule 37 in resolving the
4 dispute. Pending a determination by the Court, such information shall be treated by
5 all parties as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" in
6 accordance with this Order.

7 16. Subpoenas

8 If Confidential Material in the possession, custody, or control of any
9 Receiving Party subject to this Order is sought by subpoena, motion, or other form
10 of discovery request or compulsory process, the Receiving Party to whom the
11 process or discovery request is directed, shall (i) on or before the second business
12 day after receipt thereof, give telephonic notice and written notice by hand,
13 facsimile, or e-mail of such process or discovery request, together with a copy
14 thereof, to counsel for the Producing Party; (ii) cooperate to the extent necessary to
15 permit the Producing Party to seek to quash or modify such process or discovery
16 request, consistently with Local Rules 37 and 45; and (iii) not make production or
17 disclosure of such Confidential Material until the Producing Party consents in
18 writing to production or the Receiving Party is required by a court order to produce
19 such Confidential Material, so long as the order is not stayed prior to the date set
20 for production or disclosure.

21 17. Disposition Upon Conclusion

22 Within sixty (60) days after final termination of this Action, including all
23 appeals, all Parties and experts, consultants and witnesses shall (i) return to the
24 Producing Party or destroy all originals of material produced and designated as
25 Confidential Material and all identical copies, whether in whole or in part, of such
26 documents; and (ii) destroy all copies thereof, as well as all notes, memoranda or
27 other documents that summarize, discuss or quote materials produced and
28

1 designated as Confidential or Highly Confidential – Attorneys’ Eyes Only, except
 2 that, with respect to word processing and database tapes and disks, they shall
 3 destroy or erase such tapes or disks to the extent practicable. Outside counsel for
 4 each Party shall be entitled to retain copies of any deposition transcripts and
 5 exhibits and any pleadings, motions, memoranda, or exhibits that have been filed
 6 with the Court or admitted into evidence and that contain or refer to information
 7 designated as Confidential or Highly Confidential – Attorneys’ Eyes Only,
 8 provided that all such documents shall remain subject to this Order. Counsel of
 9 record for the Parties shall certify in writing to each Producing Party that the
 10 foregoing has been complied with.

11 18. Parties’ Own Information

12 This Order shall not limit a Producing Party’s use of its own Confidential
 13 Material. Such disclosures shall not affect any designation of documents as
 14 Confidential or Highly Confidential – Attorneys’ Eyes Only.

15 19. Remedies

16 If Confidential Material is disclosed to or comes into the possession of any
 17 person other than in a manner authorized in this Order, the party responsible for the
 18 disclosure shall immediately (1) inform those persons of this Order; and (2) inform
 19 the person who designated the material as Confidential Material and the other
 20 Parties already subject to this Order that are in possession of such Confidential
 21 Material of all pertinent facts relating to such disclosure and shall make reasonable
 22 efforts to prevent further disclosure by each unauthorized person who received
 23 Confidential Material.

24 This Confidentiality Order will be enforced under United States law. All
 25 other remedies available to any person injured by a violation of this Confidentiality
 26 Order are fully reserved.

27 ///

1 20. Notice

2 Notice under this Confidentiality Order shall be to the Parties as follows,
3 unless this provision is modified by the Parties in writing and filed with this Court:

4 Notice to ICANN shall be made to:

5 Jeffrey A. LeVee, Esq.

6 JONES DAY

7 555 South Flower Street, Fiftieth Floor

8 Los Angeles, CA 90071-2300

9 Notice to ZACR shall be made to:

10 David W. Kesselman, Esq.

11 KESSELMAN BRANTLY STOCKINGER LLP

12 1230 Rosecrans Ave., Suite 690

13 Manhattan Beach, CA 90266

14 Notice to Plaintiff shall be made to:

15 Ethan J. Brown, Esq.

16 BROWN NERI & SMITH LLP

17 11766 Wilshire Boulevard, Suite 1670

18 Los Angeles, CA 90025

19 21. Jurisdiction

20 Unless prohibited by a statute, court order, or applicable rule, the parties may
21 extend or modify deadlines under this Order by written stipulation amongst
22 themselves or, where applicable, with third parties.

23 The Court retains jurisdiction to amend or modify this Order upon stipulation
24 of the Parties to this Action, motion by a Party or non-party, or on its own motion.

25 22. Right to Assert Other Objections

26 By stipulating to the entry of this Order, no Party waives any right it
27 otherwise would have to object to disclosing or producing any information or item
28 on any ground not addressed in this Order. Similarly, no Party waives any right to
object on any ground to use in evidence of any of the material covered by this
Protective Order.

///

23. Right to Further Relief

24. Order to Remain in Force

IT IS SO ORDERED.

By: /s/
Honorable Jacqueline Chooljian
United States Magistrate Judge

[illegible]

EXHIBIT A TO JOINT STIPULATED PROTECTIVE ORDER

I hereby affirm that:

Information, including documents and things, designated as “Confidential Material,” as defined in the Stipulated Protective Order entered in the above-captioned action (“Protective Order”), is being provided to me pursuant to the terms and restrictions of the Protective Order.

I have been given a copy of and have read the Protective Order.

I am familiar with the terms of the Protective Order and I agree to comply with and to be bound by its terms.

I submit to the jurisdiction of this Court for enforcement of the Protective Order.

I agree not to use any Confidential Material disclosed to me pursuant to the Protective Order except as allowed under the Protective Order and not to disclose any of this information to persons other than those specifically authorized by the Protective Order, without the express written consent of the party who designated the information as confidential or by order of the presiding judge. I also agree to notify any stenographic, clerical or technical personnel who are required to assist me of the terms of this Protective Order and of its binding effect on them and me.

I understand that I am to retain all documents or materials designated as or containing Confidential Material in a secure manner, and that all such documents and materials are to remain in my personal custody until the completion of my

1 assigned duties in this matter, whereupon I shall: (i) destroy or return to counsel
2 who provided me with such all originals of documents and materials produced and
3 designated as Confidential Material and all identical copies, whether in whole or in
4 part, of such documents; and (ii) destroy all copies thereof, as well as all notes,
5 memoranda or other documents that summarize, discuss or quote materials
6 produced and designated as Confidential Material, except that, with respect to word
7 processing and database tapes and disks, I shall destroy or erase such tapes or disks
8 to the extent practicable.
9
10
11
12
13

14 _____
Signature

15
16 _____
Name and Title
17
18
19
20
21
22
23
24
25
26
27
28